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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-445-CWP-2022
in/
and
CWP-16902-2020 (O&M)

Date of Decision: 28.01.2022

SEEMA

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. RakeshNehra, Senior Advocate with
Mr. Sanjay Sharma, Advocate and
Mr. Atul Ravish, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

(Presence marked through Video Conference).ARUN MONGA, J. (ORAL)CM-445-CWP-2022

This is an application for preponing the main case, which is pending for 01.02.2022. For the reasons stated in the application, the same is allowed as prayed for. The main case is taken up on Board today itself.

Main case

Petitioner before this Court is an aspirant for the post of Medical Officer. Having successfully finished her MBBS and being fully qualified, she applied for the said post. Registration certificate from Delhi Medical Council concededly had been applied by her before the cut-off date to submit the application as per advertisement dated 01.01.2020 (Annexure P-6).

2. Succinct facts first, which are not in dispute. Petitioner having qualified her MBBS, applied for permanent registration certificate along with all documents on 16/17.01.2020 with the Delhi Medical Council. She was sanguine that the same would be given to her without unnecessary delays. However, that

were not to be so, as it turned out later on. The necessary adverse consequences also followed due to the delay, which was not attributable to the petitioner, inasmuch as, she was held ineligible to apply for the post of Medical Officer as on the cut-off date i.e. 22.01.2020. As already stated, the petitioner had applied for the registration certificate with Delhi Medical Council on 16.01.2020. The formal certificate of registration was issued to her on 11.03.2020. Petitioner, in the meanwhile, had applied for the post in question pursuant to the advertisement and was short listed based on the details furnished by her in her application form. She appeared for the written screening test and having cleared the same, was on the merit list of the selected candidates. Yet, her candidature was rejected on the specious plea that as on the cut-off date, she did not have the registration certificate issued from the Medical Council, as per the requirement published vide impugned notification. Hence, the writ petition.

3. In the return, aforesaid facts have not been disputed. Reliance has been placed on the impugned notification. In course of arguments, learned State counsel has also argued on the same lines and strenuously opposes the petition. He canvasses that the impugned notification is totally inflexible. The petitioner cannot thus be accorded any benefit of late grant of the registration certificate by the Medical Council. He further argues that the cut-off date as per the impugned notification is sacrosanct. It is like a line carved on the stone with no room for interference, either on the administrative side or by this Court exercising its powers of judicial review.

4. I am unable to persuade myself to accept the arguments of the learned State counsel, for the reasons stated hereinafter.

5. Interestingly, on the one hand the claim of the petitioner was refuted negated by the respondents, while on the other hand, the following stand has been taken in the return filed in para 3 and 16:-

“3. That it is pertinent to mention here that there is an acute shortage of medical and para-medical staff in the State of Haryana. The shortage is more acute in the case of Medical officers.

4. to 15. xxx xxx xxx

16. xxx xxx xxx

In the second main list of 642 selected candidates the first candidate was having 62 marks (General Category) and the last candidate was having 47 marks and in the waiting list the first candidate was having 46 and the last candidate was having 41 marks. The information regarding Government decision to fill up the present vacancies from the remaining merit list was uploaded on the website of the department (Annexure R-4) on 18.05.2020.”

6. Overall perusal of the return filed to the writ petition thus leaves no doubt, in any manner, that candidates who are less meritorious than the petitioner have been given appointment and; the department is in dire need of medical staff as there is acute shortage thereof. To be noted, it is also stated in the reply to the petition that due to acute shortage of medical staff, the government has decided to increase the age of superannuation of medical officers to 65 years and also re-engage the services of retired medical officers, who are below 70 years of age in order to meet exigencies of the work.

7. It is pertinent to note that the petitioner completed her compulsory rotatory internship under the Indian Medical Council Act before she had applied in pursuance to the advertisement. After the internship, Haryana Medical Council had issued provisional certificate of registration on 26.03.2019 to the petitioner on her successfully qualifying MBBS examination on 27.12.2018. Issuance of provisional certificate to the petitioner vide no. P-9934 dated 26.03.2019 is not disputed. This registration certificate, no doubt, bears a recital that it is only valid for completion of internship for one year from the date of passing of MBBS examination and will not be used for any other purpose. However, no statutory provision has been brought to the notice of the court for any such restriction/prohibition on its use. Being so, the certificate (annexure P/2) of the petitioner's registration on 26.03.2019 with the Haryana medical council seems

sufficient for her eligibility as on the cut-off date i.e. 22.01.2020 to apply for the post in question.

8. As stated, the cut-off date of application for the post was 22.01.2020. The petitioner had applied to Delhi Medical council for the registration certificate five days prior thereto. In ordinary course, one is unable to comprehend as to why should the Medical Council sit over the application for grant of the registration when it simply appears to be a mere formality. Neither any merit of the candidate is to be determined before grant of such a certificate nor even otherwise the registration is an additional qualification of any kind which requires scrutiny of the candidate by the Council. In fact, the registration is granted more or less as a matter of right, that too ex-parte, merely by going through the contents of the application for registration form along with the requisite documents appended therewith. In fact, looking at the procedure and the manner in which the registration is granted, it rather seems fair and equitable to opine that once, the registration is accorded, for the purpose of determining eligibility to apply for the post of Medical Officer, it should enure from the date of the application itself and the mere formality of the date which is put on the certificate, is simply to be read as date of issuance of the certificate but in reality, effective from the date of applying under the requisite proforma of the application. In any case the petitioner should not suffer for the procedural delay on the part of the Medical Council in the grant of registration.

9. In a judgment rendered in CWP-9429-2020, speaking for this Court, my learned brother Harsimran Singh Sethi, J. has been held as below :-

“17. A bare perusal of the above reproduction would show that as per section 15 of the 1956 Act, only a person who has been registered with the State Medical Council, is entitled to hold the office of a physician or a Surgeon in a Government Institution or any other Institution maintained by the local body or other authority. Further, it is clear from Section 25(4) of the 1956 Act that a person who has already been registered provisionally, on completing the training, shall be entitled for the registration in the State Medical Register under Section 15 meaning thereby that once a person has already been granted provisional registration, on completion of the

training, a right accrues in the candidate for the registration in the State Medical Register without there being any other formality to be completed except for the request for the grant of Permanent Registration.

18. In the present case, it is a conceded position that the Government of Haryana had already given the petitioner the provisional registration on 11.07.2019 (Annexure P-1) in pursuance to which the petitioner had completed her training/internship on 06.01.2020 and upon the completion of the internship, the petitioner had applied for registration with the Delhi Medical Council immediately on the very next date i.e.07.01.2020. Once the word used in section 25 (4) of the 1956 Act is 'shall', it denotes that the petitioner had right to seek the permanent registration on the basis of the provisional registration already granted in her favour. That being so, the delay in acknowledging the right by the Delhi Medical Council despite her application dated 07.01.2020, cannot defeat the claim of the petitioner as the delay in releasing the certificate in favour of the petitioner by the Delhi Medical Council was beyond the control of the petitioner.

19 & 20.xxx

xxx

xxx

21. Learned counsel appearing on behalf of the respondent has not been able to distinguish the applicability of the law cited here-in-before in the case of the present petitioner as, the petitioner had also applied for the grant of registration with the Delhi Medical Council on 07.01.2020, which is much prior to the last date of filing the application form for consideration for appointment to the post of Medical Officer and it was only the Delhi Medical Board, despite petitioner being eligible in all respects, issued the certificate on 12.02.2020, which was beyond the control of the petitioner and hence, she cannot be punished for the delay on the part of the authorities in issuing the certificate within the timeframe.

22. Further, it is also a conceded position that the actual selection process started with the holding of the written examination on 01.03.2020 and by the said date, the petitioner had already got the registration certificate even from the Delhi Medical Council. Coupled with the fact that the petitioner was allowed to undergo the complete selection process and being within merit qua the posts of Medical Officer to be filled up, now declaring her ineligible to be appointed against one of the 642 posts despite being higher in merit, will be too harsh upon the petitioner especially at the threshold of her career.”

10. I am in respectful agreement with the view taken as above.

11. The case of the present petitioner is also on similar footing except for the minor difference that the petitioner herein had applied for certificate five days prior to the cut-off date and in the judgment *ibid*, the certificate was applied ten days prior to the cut-off date. In any case, in view of my opinion that once the certificate is granted, the same should enure with effect from the date of

application and not from the date of issuance. It is irrelevant as to when was the same was applied for as long as it was applied before the cut-off date. That apart, as observed above, certificate annexure P/2 for the petitioner's registration on 26.03.2019 with Haryana medical council seems sufficient for eligibility as on the cut-off date to apply for the post in question.

12. In the premise, to my mind, the petitioner was fully eligible as on the cut-off date as per the impugned advertisement and to that extent, the same is not required to be quashed as has been sought. In fact, the respondents would do better in future to entertain, on provisional basis, the applications of all those candidates who have applied for the registration but for no fault of theirs, the same is pending with the Medical Council with the caveat that in case, they are not accorded the registration before the issuance of letter of appointment, their candidature shall be deemed to be rejected and the next in seniority list, as per merit, shall be offered the job.

13. As an upshot of the aforesaid, the writ petition is allowed and the respondents are directed to offer the appointment to the petitioner in accordance with her merit with all other consequences to follow with effect from the same date as the similarly situated other candidates have been offered the appointment, but monetary benefits to the petitioner shall start from the date she actually joins duty.

14. No order as to costs.

(ARUN MONGA)
JUDGE

28.01.2022
Gurpreet/vs

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No